



European Court strikes out case concerning total ban on tobacco in Estonian prisons

In today's **Grand Chamber** judgment¹ in the case of [Vainik and Others v. Estonia](#) (application nos. 17982/21, 43852/21 and 44600/21) the European Court of Human Rights decided, unanimously, to **strike the applications out of its list of cases**.

The case concerned the total ban on tobacco in Estonian prisons from October 2017. The three applicants in the case, prisoners at the time, complained that they could not smoke, which had led to them suffering from withdrawal symptoms.

The Court considered that it was no longer necessary to examine Mr Vainik's application as he had died and no heirs had come forward. The other two applicants were no longer affected by the ban because they had since been released and had, in any event, failed to respond to the Court's attempts to contact them.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants are Rene Vainik, Dmitri Tsajun, two Estonian nationals, and Nikolai Šmeljov, who is of unknown citizenship. They are all long-term smokers and were prisoners at the time the tobacco ban came into force in Estonia, namely on 1 October 2017.

The Minister of Justice introduced the ban through amendments to the Internal Prison Rules. The Viru Prison, where the applicants were detained, amended its rules to ban tobacco completely on the premises.

All three applicants challenged the ban in the Estonian courts, ultimately without success.

In particular, constitutional review proceedings were triggered in cases brought by Mr Tsajun and Mr Šmeljov, leading to the Supreme Court of Estonia declaring in 2019 that the ban was constitutional. The Supreme Court concluded that the protection of non-smokers' health and prison security – including, the risk of fire and of cigarettes being used as an illegal form of currency – outweighed the interference with prisoners' rights. It also considered that less restrictive alternatives – such as designated smoking areas or separating smokers from non-smokers – would not be as effective as a total ban and more difficult to supervise. Moreover, treatment and counselling for withdrawal symptoms was provided if a prisoner gave up smoking. This judgment formed the basis for dismissing all the applicants' claims.

In 2021 the Supreme Court refused to examine all three applicants' subsequent appeals on points of law.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life), the applicants complained both about the tobacco ban itself and the impact it had had on them due to withdrawal symptoms – including weight gain,

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

sleeping problems, depression and anxiety. Mr Tsajun and Mr Šmeljov also alleged that they had not been offered nicotine replacement therapy for their withdrawal symptoms.

The applications were lodged with the European Court of Human Rights on various dates in 2021.

In its [judgment](#) of 4 November 2025, the Chamber held, by 4 votes to 3, that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights as concerned the three applicants.

On 23 March 2026 the case was referred to the Grand Chamber at the Estonian Government's request.

On 10 April 2026, the Estonian Government invited the Court to strike the case out, for the reasons that are referred to below.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Mattias **Guyomar** (France), *President*,
Arnfinn **Bårdsen** (Norway),
Ivana **Jelić** (Montenegro),
Lado **Chanturia** (Georgia),
Kateřina **Šimáčková** (the Czech Republic),
Lorraine **Schembri Orland** (Malta),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),
Ana Maria **Guerra Martins** (Portugal),
Davor **Derenčinović** (Croatia),
Sebastian **Rădulețu** (Romania),
Diana **Kovatcheva** (Bulgaria),
Gediminas **Sagatys** (Lithuania),
Stéphane **Pisani** (Luxembourg),
Mateja **Đurović** (Serbia),
Vahe **Grigoryan** (Armenia),
Sébastien **Biancheri** (Monaco),

and also John **Darcy**, *Deputy Grand Chamber Registrar*.

Decision of the Court

The Grand Chamber noted that Mr Vainik had died on 28 March 2026. No one had come forward wishing to continue the application on his behalf, despite the latest developments in the case, including its referral to the Grand Chamber, that had been communicated to his lawyer, sent to his residential address and announced publicly via press releases. It was therefore no longer necessary to examine Mr Vainik's application.

The Grand Chamber also noted that the other two applicants, Mr Tsajun and Mr Šmeljov, no longer had legal representation and had failed to inform the Court that their address had changed or that they had been released. Such circumstances strongly suggested that they did not intend to pursue their applications.

Overall, the Grand Chamber found no grounds relating to respect for human rights requiring it to nonetheless examine the case. Mr Tsajun and Mr Šmeljov had been released and were therefore no longer currently affected by the ban. No other similar cases had been brought either against Estonia or any other Convention State which could justify continuing to examine the case. Furthermore, the Supreme Court of Estonia had thoroughly reviewed the ban, setting out at length its reasons for concluding that it was constitutional.

The Grand Chamber of the Court therefore decided to strike the applications out of its list of cases. Lastly, the Grand Chamber clarified that the earlier Chamber judgment was legally void, and that the case had been finally decided by this judgment striking it out.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.